

EXHIBIT 1

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1202

(202) 942-5000
FACSIMILE (202) 942-5999

IRVIN B. NATHAN
(202) 942-5070

NEW YORK
DENVER
LOS ANGELES
LONDON

November 20, 2000

VIA FACSIMILE AND FEDERAL EXPRESS

Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
Brooklyn Courthouse
225 Cadman Plaza East
Brooklyn, New York

Re: Departments of Amazonas, et al. v. Philip Morris, et al.

Dear Judge Garaufis:

On behalf of the Philip Morris defendants, we oppose the issuance of non-party subpoenas to banks for records from the early 1990s relating to individuals with no apparent connection to Philip Morris. There is no indication that the documents, assuming that they ever existed or are currently in the possession of the banks, are in any danger of being destroyed or lost. Further, the issuance of the subpoenas would embroil the parties and non-parties in litigation on issues relating to the subject matter jurisdiction of this Court, the impact of the four-year civil RICO statute of limitations and the scope of relevance of the complaint. Such litigation is completely premature before this Court has received or considered the defendants' motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim for relief. The matter is also premature because of the pendency of the motions to disqualify plaintiffs' counsel for ethical violations.

The plaintiffs evidently made a letter request to you last Thursday, November 16, 2000, requesting leave from this Court to initiate non-party discovery on various American banks. Letter from K. Malone to Hon. Garaufis of 11/16/00 (Ex. A). Plaintiffs' counsel did not notify Philip Morris' counsel of this fact until after business hours last Friday and had not as of the weekend provided us with any of the attachments that were apparently sent to you with their request.

The fact that plaintiffs' counsel has chosen to take the issue of non-party discovery directly to the Court is disappointing. On November 6, 2000, plaintiffs' counsel wrote to Philip Morris' counsel explaining that they were interested in initiating

NOV 21 2000

KEVIN P.S.

Honorable Nicholas G. Garaufis
November 20, 2000
Page 2

non-party discovery and would appreciate Philip Morris' assistance. Letter from K. Malone to I. Nathan of 11/6/00 (Ex. B). We responded to plaintiffs' counsel on November 13, 2000, explaining that "we would be willing to work with you . . . to attempt to arrange for a preservation of potentially relevant documents currently in the possession of pertinent financial institutions." Letter from I. Nathan to K. Malone of 11/13/00 (Ex. C). In doing so, we asked that plaintiffs "advise us of the identity of the financial institutions in which you are interested, the precise nature of the documents you wish preserved and a reasonable cut-off date bearing some logical connection to a damage period authorized by the RICO statute." *Id.* It is not clear to us why plaintiffs' counsel would approach Philip Morris seeking its cooperation and then refuse this reasonable request.

The plaintiffs' desire to move beyond the preservation of non-party documents and to require their actual production threatens to distort the briefing schedule established by this Court. Recognizing that there are considerable questions about this Court's subject matter jurisdiction and about whether the plaintiffs have stated a claim for which relief can be granted, this Court has ordered that the defendants submit their briefs on these issues by December 15, 2000. Allowing the plaintiffs to issue subpoenas to non-parties will likely disrupt the briefing of these issues.

It is likely that non-party financial institutions will seek to quash any subpoena asking them to divulge private bank records on the grounds that this Court lacks jurisdiction over the plaintiffs' novel claims. See *United States Catholic Conf. v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76 (1988) (holding that a federal court cannot subpoena evidence from nonparties if it lacks subject matter jurisdiction). Such an action would force this Court to consider the very issues at this juncture that it has asked the parties to begin briefing in mid-December. Moreover, a decision by this Court to compel the production of those documents would be immediately appealable to the Second Circuit – even though the jurisdictional issues may not have been briefed before this Court by the parties. *Id.* at 76.

Before this Court authorizes any discovery, it should decide whether it has jurisdiction in this case and those issues should be briefed by the parties in the first instance. Given the amount of time that the parties and this Court already have invested in preparing for this issue to be heard, it would be unfair to place the burden of litigating the jurisdiction of this Court on nonparties.

The plaintiffs have not offered any compelling reason for non-party discovery to begin before this Court has addressed the jurisdictional issues in this case on the schedule that the plaintiffs accepted. Indeed, the documents that the plaintiffs appear to be seeking deal principally with the 1989-90 time frame – a period of time that is well outside

ARNOLD & PORTER

Honorable Nicholas G. Garaufis
November 20, 2000
Page 3

RICO's four-year statute of limitations. Moreover, the plaintiffs have not even demonstrated that such documents still exist or any likelihood, if they still exist, that they are in danger of loss or destruction at any point in the near future.

In any event, if the plaintiffs can demonstrate a need to preserve such documents, we can seek to secure a stipulation to preserve them or, if need be, this Court can utilize the All Writs Act, 28 U.S.C. § 1651, to issue a protective order to preserve the status quo. *Delo v. Stokes*, 495 U.S. 320, 323 (1990); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603-04 (1966). An appropriate preservation order appears adequate to address the plaintiffs' concern that documents not be destroyed and would spare this Court and the parties from becoming embroiled in premature litigation concerning the jurisdiction of the Court and related motions to quash.

In short, we urge the Court to deny the request to issue these proposed non-party subpoenas at this time. We would be pleased to discuss this matter further at the status conference in the case set for November 27, 2000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Irvin B. Nathan', with a long horizontal flourish extending to the right.

Irvin B. Nathan

cc: John J. Halloran, Jr., Esq.
Kevin A. Malone, Esq.
Andrew Sacks, Esq.
Ronald S. Rolfe, Esq.
David Bernick, Esq.

A

11/17/2000 15:51 FAX

KRUPNICK&CAMPBELL

0003/007

LAW OFFICES

**KRUPNICK CAMPBELL MALONE ROSELLI
BUSER SLAMA HANCOCK McNELIS LIBERMAN & McKEE**

A PROFESSIONAL ASSOCIATION

JON E. KRUPNICK*
WALTER G. CAMPBELL, JR.*
KEVIN A. MALONE*
RICHARD J. ROSELLI*
THOMAS E. BUSER*
JOSEPH J. SLAMA*
KELLY D. HANCOCK*
LISA A. McNELIS*
SCOTT S. LIBERMAN*
ROBERT J. McKEE

OF COUNSEL
BEN J. WEAVER
DIANNE JAY WEAVER*

November 16, 2000

CARLOS A. ACEVEDO
LOUIS R. BATTISTA
IVAN F. CABRERA
ROBERT D. ERBEN
KELLEY B. GELB
SEAN J. GREENE
HOLLY D. KRULIK
MICHAEL J. RYAN

*BOARD CERTIFIED
CIVIL TRIAL LAWYER

Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
Brooklyn Courthouse
225 Cadman Plaza East
Brooklyn, New York

Re: Departments of Amazonas, et al. v. Philip Morris, etc.
Case number: 00 Civ 02881 (NGG)

Dear Judge Garaufis:

At the hearing of October 13, 2000, wherein this Court denied the Defendant's motions to stay proceedings, the Court also ordered that the Plaintiffs would be allowed to conduct discovery as to non-parties upon application to the Court. The Plaintiffs have contacted the Defendants and requested that they agree to the propounding of subpoenas. The Defendants have declined to agree. (See letter of Irvin Nathan attached hereto as Exhibit 19.) Accordingly, pursuant to Local Rule 37.3, the Plaintiffs request that this Court enter an order allowing the Plaintiffs to propound the attached subpoenas duces tecum.

The Plaintiffs attach hereto 13 subpoenas duces tecum that the Plaintiffs respectfully request they be given leave to serve as the first step in discovery in this case. All of the subpoenas duces tecum are directed to United States banks and request bank records related to specific accounts. The Plaintiffs have substantial evidence to demonstrate that the aforesaid bank accounts contain evidence of money laundering in conjunction with the purchase of Philip Morris cigarettes that were ultimately smuggled into the Republic of Colombia.

For purposes of this letter, the subpoenas are labeled numbers 1-13. Subpoenas 1 through 9 are directed to banks such as Chase Manhattan Bank, Citibank, and Banco Central of New York, located in the Eastern District of New York. The account numbers specified in the subpoenas belong to individuals, some of whom have previously been identified by U.S. law enforcement and/or indicted and/or convicted of money laundering. The documentation attached as exhibits to the subpoenas demonstrates that in each instance the bank account holder issued multiple checks that were used as payment to a company known as Mansur Trading Freezone N.V. in Aruba for the payment for Philip Morris

700 SOUTHEAST THIRD AVENUE, SUITE 100, FORT LAUDERDALE, FLORIDA 33316-1186
TELEPHONE (954) 763-8181 TOLL FREE (877) 763-8181 FAX (954) 763-8292 WWW.KRUPNICKLAW.COM

Honorable Nicholas G. Garaufis
November 16, 2000
Page 2

Re: Department of Amazonas, et al. v. Philip Morris
Case number: 00 Civ. 2881 (NGG)

cigarettes on behalf of persons other than the holder of the account. In each such instance, the true purchaser of the cigarettes transported the cigarettes illegally into Colombia. In each such incident, payment for the cigarettes was ultimately delivered from Mansur Trading Freezone N.V. to PHILIP MORRIS PRODUCTS, INC. in New York, New York. Mansur Trading Freezone N.V. was, at relevant times, Philip Morris' primary distributor of cigarettes into Colombia.

The bank account identified in subpoena number 10 is identical in character to the bank accounts subpoenaed in subpoenas numbers 1 through 9 with the exception that the bank in question is located in Miami, Florida.

Subpoena number 11 is for bank account records currently in the possession of the Trustee in Bankruptcy of Southeast Bank N.A., previously located in Miami, Florida. Documents attached hereto demonstrate that this particular bank account represented the conduit by which Mansur Trading Freezone N.V. at relevant times made payments for cigarette products to PHILIP MORRIS PRODUCTS, INC. As such, this bank account is highly relevant to the Plaintiffs' case in that it represents a substantial link in the money laundering chain.

Subpoenas numbered 12 and 13 are for bank account records from Barclay's Bank in Miami, Florida, and CitiBank in Buffalo, New York. Each of these bank account records relate to bank accounts held by InterBank Aruba N.V. and that represent a conduit by which Mansur Trading Freezone N.V. at relevant times made payments for cigarette products to PHILIP MORRIS PRODUCTS, INC. As such, these bank accounts are highly relevant to the Plaintiffs' case in that they represent a substantial link in the money-laundering chain.

If requested to do so by the Court, the Plaintiffs can give a detailed explanation and analysis as to how the records in question prove the money laundering alleged. However, for the purpose of brevity in this letter, the Plaintiffs will simply inform the Court that the packages of documents attached to the subpoenas duces tecum demonstrate the following:

- a. In approximately December 1989, PHILIP MORRIS PRODUCTS, INC. shipped a large volume of cigarettes (e.g. 53,900,000 Marlboro cigarettes) from its production facilities in the United States to Mansur Trading Freezone N.V. in Aruba by way of Miami, Florida.
- b. Subsequent to that date, Mansur Trading Freezone N.V. sold Marlboro cigarettes to a variety of its customers, keeping records as to the name of the customer and the dollar value of cigarettes purchased. In no instance is the customer who purchased the cigarettes the person who issued payments for the cigarettes.
- c. In each instance, the cigarettes were paid for by individuals located in the Eastern District of New York or in Miami, Florida, by way of checks drawn from the bank accounts that are the subject matter of this motion. In each instance, payment was made by way of a series of personal checks, often consecutively numbered, and always dated within a few days of each other. (See summary of documents attached hereto as Exhibit 14.) In most instances, the checks are for amounts less than Ten Thousand Dollars (\$10,000.00) each so as to avoid the Ten Thousand Dollar limit that would trigger reporting duties by the banks and/or detection by

Honorable Nicholas G. Garaufis
November 16, 2000
Page 3

Re: Department of Amazonas, et al. v. Philip Morris
Case number: 00 Civ 2881 (NGG)

- United States bank regulators if the checks had been cashed and not used for purchases. For example, in the period between April 1, 1990, and April 5, 1990, Bladen A. Rizo wrote 18 checks from five different banks that were ultimately delivered to Mansur Trading Freezone N.V. Each check was for an amount between Four Thousand One Hundred Dollars (\$4,100.00) and Four Thousand Seven Hundred Dollars (\$4,700.00) and was used for the purchase of cigarettes. (Subpoenas numbered 1-5.)
- d. Usually, when Mansur Trading Freezone N.V. received these checks, they would stamp their name on the check as payee and write on the check the name of the actual cigarette customer for whom each payment was made. The checks, along with others, were all deposited into a bank account of Mansur Trading Freezone N.V. at Interbank Aruba N.V.
 - e. Interbank Aruba N.V. had opened a bank account at Southeast Bank N.A. located in Miami, Florida. After Southeast Bank N.A. went bankrupt, Interbank Aruba N.V. established similar accounts at Barclay's Bank in Miami and Citibank in Buffalo, New York.
 - f. Payments were made from Mansur Trading Freezone N.V. to PHILIP MORRIS PRODUCTS, INC. at its address at 120 Park Avenue, New York, New York, by way of checks drawn on the Southeast Bank account held by Interbank Aruba N.V. In one example, the payment was in the amount of One Million Forty-seven Thousand Five Hundred Ninety-nine dollars and Fifty-five cents (\$1,047,599.55). At later dates, Interbank Aruba N.V. made similar payments to PHILIP MORRIS PRODUCTS, INC. through the accounts it had opened at Barclay's Bank, in Miami and CitiBank in Buffalo, New York. The payments made to PHILIP MORRIS in the attached exhibits total approximately \$73,000,000.

The aforesaid records support a clear case of classic money laundering.

Subpoena number 11 (and others) also relate to bank records that are material evidence towards proving that all or part of the proceeds of the money-laundering scheme are narcotics proceeds. The documents attached hereto as Exhibit "15" reveal that the original purchaser of some of the cigarettes in question is an individual known as Santander Lope Sierra. As has been explained previously to the Court, Santander Lope Sierra is known in Colombia as "The Marlboro Man" (Exhibit "16") and was a direct customer of the PHILIP MORRIS DEFENDANTS as reflected in the accounting records and accounts receivable documentation generated by PHILIP MORRIS. Santander Lope Sierra is also a documented narcotics smuggler as is demonstrated by the pages from the affidavit attached hereto as Exhibit "17". In the records of Mansur Trading Freezone N.V., the account of Santander Lope Sierra is often designated as "Pollo" or "Pollo S.A."

The documentation attached hereto to subpoena 11, demonstrates that Santander Lope Sierra, as a direct customer of PHILIP MORRIS, purchased Marlboro cigarettes and sometimes paid for them by way of checks made out to PHILIP MORRIS PRODUCTS, INC. However, the checks were not delivered to PHILIP MORRIS PRODUCTS, INC. Instead, the checks were delivered to Mansur Trading Freezone N.V. in Aruba. Mansur Trading Freezone would deposit checks made out to PHILIP MORRIS PRODUCTS, INC. in bank accounts of Mansur Trading Freezone N.V. at Interbank Aruba N.V. On other occasions, checks made out to Santander Lope Sierra were endorsed and delivered to Mansur Trading Freezone N.V. as payment for cigarettes and the aforesaid checks were deposited into bank

Honorable Nicholas G. Garaufis
November 16, 2000
Page 4

Re: Department of Amazonas, et al. v. Philip Morris
Case number: 00 Civ. 2881 (NGG)

accounts of Mansur Trading Freezone N.V. at Interbank Aruba N.V. The records sought in subpoena number 11 will allow the Plaintiffs to trace the Lopesierra payments back to PHILIP MORRIS PRODUCTS, INC. Clearly, the funds were intended for PHILIP MORRIS PRODUCTS, INC. in that some of the original checks were made out to PHILIP MORRIS PRODUCTS, INC.

The documents attached to subpoena number 11 also relate to transactions involving an individual known as David Cybul, also known as David Cybulkiewicz. David Cybul has previously been identified by U.S. law enforcement as a person implicated in the laundering of narcotics proceeds. See Exhibit "18." Numerous documents in the Plaintiffs' possession reflect that David Cybul has been a long-time customer of both Mansur Trading Freezone N.V. and Romar Freezone, the primary distributor for BAT in Aruba. The documents attached to subpoena 11 demonstrate that David Cybul was paying for PHILIP MORRIS cigarettes from Mansur Trading Freezone N.V. The bank records sought pursuant to subpoena 11 will allow the Plaintiffs to trace funds from David Cybul to PHILIP MORRIS PRODUCTS, INC.

The aforesaid bank accounts are material evidence to demonstrate a pattern of money laundering that began in 1990 and progressed into the future. Said evidence is highly relevant to the Plaintiffs money-laundering case against the Defendants.

Most of the aforesaid evidence attached hereto relates to transactions that occurred in April and May 1990. The Plaintiffs possess voluminous records that demonstrate similar money laundering activities up to and including 1999 and shipping records related to smuggled cigarettes up to August 2000. The Plaintiffs intend to subpoena additional bank records in the near future. However, the Plaintiffs request that these subpoenas be issued promptly in that these records are highly relevant to the Plaintiffs' case, will help to show a continuing course of conduct from 1990 through the present, and may be lost or destroyed due to their age if they are not promptly recovered. In particular, the records of Southeast Bank N.A. are at risk of being lost or destroyed.

The proof of the PHILIP MORRIS DEFENDANTS' knowledge and complicity in the money laundering will be presented by separate proof once this Court allows discovery as to the parties. However, because the documents on their face present prima facie proof of money laundering by PHILIP MORRIS DEFENDANTS' primary distributor, Mansur Trading Freezone N.V., the records are clearly discoverable and the Plaintiffs should be entitled to subpoena them.

The Plaintiffs respectfully request that this Court enter an order allowing the Plaintiffs to serve the attached subpoenas duces tecum.

Very truly yours,



Kevin A. Malone

11/17/2000 15:52 FAX

KRUPNICK&CAMPBELL

0007/007

Honorable Nicholas G. Garaufis
November 16, 2000
Page 5

Re. Department of Amazonas, et al. v. Philip Morris
Case number: 00 Civ. 2881 (NGG)

KAM/lmp

CC: Via facsimile and mail:
John J. Halloran, Jr.
Andrew B. Sacks
Ronald S. Rolfe
Craig A. Stewart
Irvin B. Nathan
Peter A. Bellacosa
Mary Elizabeth McGarry

B

LAW OFFICES

KRUPNICK CAMPBELL MALONE ROSELLI
BUSER SLAMA HANCOCK MCNELIS LIBERMAN & MCKEE

A PROFESSIONAL ASSOCIATION

JON E. KRUPNICK*
WALTER G. CAMPBELL, JR.*
KEVIN A. MALONE*
RICHARD J. ROSELLI*
THOMAS E. BUSER*
JOSEPH J. SLAMA*
KELLY D. HANCOCK
LISA A. MCNELIS*
SCOTT S. LIBERMAN
ROBERT J. MCKEE

OF COUNSEL
BEN J. WEAVER
DIANNE JAY WEAVER*



CARLOS A. ACEVEDO
LOUIS R. BATTISTA
IVAN F. CABRERA
ROBERT D. ERBEN
KELLEY B. GELB
SEAN J. GREENE
HOLLY D. KRULIK
MICHAEL J. RYAN

*BOARD CERTIFIED
CIVIL TRIAL LAWYER

November 6, 2000

Via Facsimile: 202-942-5999

Irvin B. Nathan, Esquire
Arnold & Porter
555 Twelfth Street, Northwest
Washington, DC 20004-1202

Re: Departments of Amazonas, et al. v. Philip Morris, etc.

Dear Mr. Nathan:

As you know, at the last hearing, the Court indicated that the plaintiffs would be allowed to begin discovery as to third parties upon proper motion. Accordingly, we are preparing a motion for leave to serve approximately 16 subpoenas duces tecum on a number of banks, most of which are located in the Eastern District of New York. The documents sought are bank records from the early 1990s that will be used as evidence to show the flow of laundered narcotics proceeds from the cigarette smugglers to Philip Morris. They are obviously highly relevant to our case.

Pursuant to local rule, we are contacting you to determine whether you can agree to our propounding these subpoenas. Please notify me by Monday, November 13, 2000, if you agree that we can propound these subpoenas without having to file a motion with the Court.

Irvin B. Nathan, Esquire
Arnold & Porter
November 9, 2000
Page 2

By way of this letter, I am notifying the attorneys for the BAT defendants. Obviously, they would have a right to object as well. However, since this first set of bank records relate primarily to Philip Morris, I believe it is your position that counts in this particular instance.

I look forward to your response.

Very truly yours,


Kevin A. Malone

KAM/hmp

CC: Ronald S. Rolfe, Esquire
Cravath, Swaine & Moore
825 Eighth Avenue
New York, New York 10019-7475

Peter A. Bellacosa, Esquire
Citigroup Center
153 East 53rd Street
New York, New York 10022-4675

David M. Bernick, Esquire
Jonathan C. Bunge, Esquire
200 East Randolph Drive
Chicago, Illinois 60601

C

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1202

TEL: (202) 942-5000
FACSIMILE: (202) 942-5000

IRVIN B. NATHAN
(202) 942-5070

NEW YORK
DENVER
LOS ANGELES
LONDON

November 13, 2000

BY FACSIMILE AND FEDERAL EXPRESS

Kevin A. Malone, Esq.
Krupnick, Campbell, Malone, Roselli, Buser, Slama,
Hancock, McNelis, Liberman & McKee
700 Southeast Third Avenue, Suite 100
Fort Lauderdale, Florida 33316

Re: *Department of Amazonas, et al. v. Philip Morris Companies Inc., et al.*,
00 CV 2881 (NGG) (consolidated)

Dear Kevin:

In response to your letter of November 6, 2000, this is to advise that, in order to spare unnecessary or premature litigation, we would be willing to work with you in the above-referenced action to attempt to arrange for a preservation of potentially relevant documents currently in the possession of pertinent financial institutions.

However, in the absence of any compelling explanation for seeking to obtain production of documents before the Court has ruled on the motions to dismiss for lack of subject matter jurisdiction, the failure of your complaint to state a claim for relief and other grounds, we are not in a position to agree to the issuance of non-party subpoenas for production of documents as suggested in your letter of November 6. Further, we note that while your letter describes the purpose of seeking the documents in inflammatory language that we deny, the letter fails to identify a single financial institution or any of the categories of financial records you intend to seek. Finally, we note that your request seeks documents that predate the expiration of civil RICO's four-year statute of limitations. While we see no justification for obtaining bank records prior to May 1996 – or four years prior to the filing of the first complaint – we see even less justification for litigating the issue at this time before our substantial motions to dismiss are briefed, argued and resolved.

If you are interested in working with us to arrange for the preservation of certain financial records in the possession of specific financial institutions, I suggest you advise us of the identity of the financial institutions in which you are interested, the precise nature of the documents you wish preserved and a reasonable cut-off date bearing some logical connection to a damage period authorized by the RICO statute. We would then be

ARNOLD & PORTER

Kevin A. Malone, Esq.

November 13, 2000

Page 2

willing to work with counsel for the identified financial institutions to seek a stipulation, which could be so ordered by the Court, to preserve the documents for the duration of this litigation, including by suspending any otherwise applicable document retention policy.

We look forward to working with you constructively on this matter and sparing the Court unnecessary litigation on this premature issue.

Sincerely,

A handwritten signature in black ink, appearing to read "I. Nathan", with a stylized flourish at the end.

Irvin B. Nathan

cc: Ronald S. Rolfe, Esq.
Peter A. Bellacosa, Esq.
David M. Bernick, Esq.